

the frame operably coupled to the base, wherein the base is in neutrally biased (see Figs. 6-7) and column 14, lines 26-44); [claim 37] wherein the flexible base has about zero flex strength; [claim 38] wherein the flexible base is made from a resilient base material with little spring force; [claim 40] wherein the flexible base has an area of reduced thickness (22) at the point of flexion; and [claim 41] wherein the flexible base is made from a thermoplastic material that has a transverse groove (22) on the underside of the base." Further, to support the rejection the Examiner states, "as shown in FIGURES 6-7 and column 14, lines 26-44, the base is allowed to free heel flex, while a shock absorption system dampens vibrations between the base and frame, but does not provide any biasing of the movement of the base in relation to the frame."

Applicant understands that the Examiner is stating that the limitations of Claims 29 and 35 are met by FIGURES 6 and 7 of the Svensson patent. Applicant has reviewed the passages indicated by the Examiner, and disagrees as to what is taught or suggested by the passages.

Svensson clearly teaches with respect to FIGURES 6 and 7, "the base 104 incorporates a spring, which may suitably be the same as the previously described spring plate 72 illustrated in regard to the embodiment of FIGS. 1 through 4." (Col. 12, lines 15-17.) Svensson teaches "[t]hus, the base 104 is of one piece construction, with the contour of the base 104 at the metatarsal head portion 108 providing for flexure of the base below the metatarsal head of the foot, and the composite material utilized to form the base 104 providing the spring force for biasing of the base 104 to the unflexed configuration shown in FIG.6." (Col 12, lines 24-30.) Applicant submits that the use of the word "unflexed" in the Svensson patent refers to the skate not being bent. The meaning of the word "flex" being synonymous with "bend" is evident, especially in such passages as, "[t]he present invention thus provides skates having bases that flex, preferably below the metatarsal head of the skater's foot, in conformity with the anatomy of

the foot." (Col. 3, lines 29-31.) Svensson teaches that "the biasing of the spring incorporated into the frame 104 however prevents undesirable chattering of the base 104 relative to the frame 112." (Col. 14, lines 33-35.) Furthermore, "free" heel flex (Col. 14, line 29) is submitted to mean only that the "heel of the skate can pivot upwardly off of the frame 112 upon passing over protuberances in the ground." (Col. 14, lines 31-33.) Accordingly, applicant submits that the teaching of the Svensson patent is clearly to have a spring biasing the frame and the heel closed, which is referred to as the unflexed configuration.

Applicant believes that the Examiner has misunderstood the teachings of the Svensson patent and the nature of the claimed invention. The present application further discusses the Svensson patent and distinguishes the claimed flexing base and frame of the claims in the following passage:

The construction and advantages of a flexing base are further described in U.S. patent Application Serial No. 09/094,425, which is herein incorporated by reference. While many advantages are attained by the previous application, the flexing base of the present invention is neutrally biased, meaning that the base flexing region 520 produces little to no upward biasing of the frame 508 against the base 502. Little to no upward biasing means that the base is intentionally constructed having about zero flex strength, or stated another way, bias is substantially reduced by selection of a resilient base material with little spring force, such as leather, or that is reduced in thickness at least at the point of flexion, such as a thermoplastic base that is transversely grooved on the underside of the base. While it is to be appreciated that many materials have a natural tendency to resist bending, and inherently possess an integral biasing force which returns the material to its original shape; efforts have been expended into the development of a base having little to no flex strength, other than what is to be expected of the natural tendency inherent to many materials to resist bending. Little to no flex strength can also be gauged by the efforts required to maintain the base in a flexed state. Preferably, the base of the present invention is constructed so as to facilitate holding open the frame by the skate-wearer flexing the base without expending energy to bring about undue muscular fatigue of the forward foot. While the base exerts little to no upward force on the frame, the device is

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constructed to prevent the frame from flopping downward, as when occurs in a conventionally hinged skate with no spring. This is to prevent loss of skate control when a skate-wearer is forced into lifting a skate off the surface, as when a skater rounds a corner, the skater must cross one skate in front of the other. Thus, the flexing base hinge, while not constructed to significantly bias the frame to the base, is constructed to have sufficient resistance to unrestricted movement of the frame away from the shoe base to counter the weight of the frame and to prevent the frame from flopping open. (Page 25, lines 13 to page 26, line 6.)

Accordingly, applicant respectfully requests careful consideration of the remarks presented herein, and withdrawal of the rejection of the Claims 29, 35, 37, 38, 40, and 41.

The Rejection of Claim 39 Under 35 U.S.C. § 103(a)

Claim 39 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Svensson et al. (U.S. Patent No. 6,120,040) in view of Examiner's Official Notice. Applicant respectfully traverses the rejection.

The Examiner states, "Examiner takes Official Notice that it is notoriously old and well known that skate bases have been made from leather." Applicant respectfully traverses the Official Notice. Applicant submits that the prior art does not teach or suggest the use of leather for the specific purpose as stated in the claims.

Furthermore, Claim 39 is dependent from Claim 35. Because Claim 35 is allowable, applicant respectfully submits that Claim 39 is also allowable.

Accordingly, the withdrawal of the rejection of Claim 39 is respectfully requested.

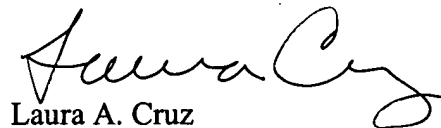
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CONCLUSION

In view of the foregoing remarks, applicant respectfully submits that Claims 29, 35, 37, 38, 40, and 41 are in condition for allowance. If the Examiner has any further questions or comments, the Examiner may contact the applicant's attorney at the number provided below.

Respectfully submitted,

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